



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0069; Notice 2]

TAP Worldwide, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: TAP Worldwide, LLC, (TAP) has determined that certain model year (MY) 2017-2019 Smittybilt SCOUT Trailer Kits do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less*. TAP filed a noncompliance report dated June 26, 2019. Tap also petitioned NHTSA on July 8, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of TAP's petition.

FOR FURTHER INFORMATION CONTACT: Kerrin Bressant, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-1110.

SUPPLEMENTARY INFORMATION:

I. Overview:

TAP has determined that certain MY 2017-2019 Smittybilt SCOUT Trailer Kits do not fully comply with paragraph S4.3.5 and Figure 1 of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less* (49 CFR 571.110). TAP filed a noncompliance report dated June 26, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. TAP also petitioned NHTSA on July 8, 2019, for an

exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of TAP's petition was published with a 30-day public comment period, on September 20, 2019, in the **Federal Register** (84 FR 49622). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2019-0069."

II. Trailers Involved:

Approximately 176 MY 2017-2019 Smittybilt SCOUT Trailer Kits, manufactured between March 31, 2017, and April 28, 2019, are potentially involved.

III. Noncompliance:

TAP explains that the noncompliance is that the vehicle placards on the subject trailer kits, do not fully comply with the formatting and color requirements (which require either "yellow text on black background" or "black text on yellow background") as required by paragraph S4.3.5 and Figure 1 of FMVSS No. 110. The TAP placards were mounted with black text on a white background.

IV. Rule Requirements:

S4.3.5 and Figure 1 of FMVSS No. 110 include the requirements relevant to this petition. Each trailer, except for an incomplete vehicle, must show the information specified in S4.3(c) through (g). This information, per Figures 1 and 2 of FMVSS No. 110, should be illustrated with EITHER "Yellow Text on Black Background" or "Black Text on Yellow Background." Additionally, at the manufacturer's option, they may show the information specified in S4.3(h) proximate to the placard or the Tire Information Pressure Label and the listed elements of S4.3(i) in accordance with S4.3(d). The information specified in S4.3(e) shall be shown on both the

vehicle placard and on the tire inflation pressure label (if such a label is affixed to provide the information specified in S4.3(c), (d), (h), and (i)) in the format and color scheme set forth in Figures 1 and 2.

V. Summary of TAP's Petition:

TAP described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, TAP submitted the following reasoning:

1. The subject tire pressure information labels provide all required and correct technical information, and because such information is found in three other locations, there is no safety risk or risk of tire overloading.

- a. TAP states that the SCOUT Trailers are equipped with tires that can handle their load carrying capacity, and there is, accordingly, no risk of overloading. The SCOUT Trailer's tires are safe and comply with all applicable standards. The sole noncompliance at issue in this petition relates to formatting, namely the tire information label, not conforming to the formatting and color requirements provided in Figure 1 of FMVSS No. 110. TAP says that because the tire pressure information labels contain all the information required by FMVSS No. 110 and because such information is accurate, the subject noncompliance will not create a safety risk to any person towing or using a SCOUT Trailer.
- b. Additionally, the correct tire pressure information can be found in three other locations: (1) on the SCOUT Trailer's certification label, as required under 49 CFR Part 565; (2) in the SCOUT Trailer owner's manual; and (3) on the SCOUT Trailer's tire sidewall markings. Accordingly, including the tire pressure information label, there are four separate places where a SCOUT Trailer owner can view the tire size, pressure, and load-carrying capacity information of his/her SCOUT Trailer.

- c. TAP also stated that because the label provides correct information regarding tire size and inflation pressure, TAP's failure to utilize the formatting, provided in Figure 1 of FMVSS No. 110, will not present a motor vehicle safety risk or cause consumers to misunderstand the label.

2. NHTSA has previously granted petitions with inconsequential noncompliances where the noncompliance relates solely to the labeling that does not conform with formatting requirements and where the manufacturer can show that the noncompliance is unlikely to cause consumer misunderstanding.

- a. TAP believes that granting this petition would be consistent with NHTSA's prior decisions on petitions involving label formatting requirements. For example, in connection with a prior petition for inconsequential noncompliance, NHTSA found that deviations in the wording on the label required by FMVSS No. 303 were inconsequential because the rationale and intent of the labeling requirement was nonetheless met, even though the exact, prescribed wording was not used, *See* IMPCO Technologies; Grant of Petition, 65 FR 14009 (March 15, 2000). Similarly, in another matter, NHTSA concluded that the noncompliance with the seat belt assembly label requirements was inconsequential because although the subject assemblies had the wrong label, the likelihood that a seatbelt would be incorrectly installed as a result was low, *See* TRW, Inc., Grant of Petition, 55 FR 7171, 7172 (February 4, 1993).

Finally, in connection with a petition similar to this one, NHTSA recently found that a tire pressure information label that was not completely legible but provided all of the correct information was an inconsequential noncompliance, *See* Mercedes-Benz USA, LLC, Grant of Petition, 84 FR 25118 (May 30, 2019). With respect to that petition, NHTSA reasoned that the noncompliance was

inconsequential because the owners could still find the relevant information in other locations, such as in the owner's manual and on the tire sidewall.

Here, TAP's petition for inconsequential noncompliance meets the criteria that NHTSA has previously held such petitions must meet in order to be granted.

3. NHTSA has also granted petitions for inconsequential noncompliances where tire pressure information labels contained incorrect or missing information.

- a. TAP says that NHTSA has also granted petitions for inconsequential noncompliance relating to the tire pressure information labels when the label contained incorrect information or was missing tire pressure information altogether, *See General Motors, LLC, Grant of Petition, 84 FR 25117 (May 30, 2019)*. In so holding, NHTSA reasoned that owners can determine the correct tire pressure information through the owner's manual or other locations. Also, NHTSA recently granted a petition for inconsequential noncompliance where the tire pressure information label provided tire inflation information for 18-inch tires, even though the vehicle was equipped with 17-inch tires, *See BMW of North America, LLC, Grant of Petition, 84 FR 26505 (June 6, 2019)*. NHTSA concluded that there was no risk of underinflating or overloading the tires, and consumers could find the correct tire pressure information in the owner's manual or on the tire sidewall.

Here, not only can the correct tire pressure information for the SCOUT Trailer be found in various other places, but unlike the petitions referenced above, it can also be found on the tire pressure information label itself, as TAP has confirmed that the information listed on the label is accurate.

4. TAP will correct the formatting and color noncompliance on all SCOUT Trailers subsequently sold.

- a. To address the noncompliance referenced in the part 573 Report, TAP has reformatted the SCOUT Trailer tire pressure information label and will utilize the

properly formatted label on all SCOUT Trailers sold subsequent to the filing of its June 26, 2019, part 573 Report.

TAP concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA's Analysis:

TAP Worldwide explained that the noncompliance is that while containing all technical information required by FMVSS No. 110, the installed labels on the subject vehicles do not conform to the formatting and color requirements referenced in Figure 1 of FMVSS No. 110.

The intent of FMVSS No. 110 is to ensure that vehicles are equipped with tires appropriate to handle maximum vehicle loads and prevent overloading. As notated by TAP in their petition submission, the actual technical information (in this case, the appropriate tire pressure and cargo carrying capacity value) is correct. However, the format of the label (i.e., its coloring – either yellow text and black background or black text with a yellow background surrounded by a red border - and missing tire figure) was not that which is prescribed by Figure 1 in FMVSS No. 110, S4.3. The combination of contrasting colors and the figure representing a tire were placed on the tire and loading information label in order to attract the attention of the consumer to this important tire related information. In lieu of the fact that the noncompliance is an incorrectly colored (formatted) tire pressure label and a missing representation of an actual tire, NHTSA agrees with the manufacturer that the subject noncompliance will not create a safety risk to any person towing or using the subject trailer.

NHTSA's Decision:

In consideration of the foregoing analysis, NHTSA finds that TAP Worldwide has met its burden of persuasion that the subject FMVSS No. 110 noncompliance at issue is inconsequential to motor vehicle safety. Accordingly, TAP's petition is hereby granted and TAP Worldwide is

consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision applies to the subject trailers that TAP no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant trailers under their control after TAP notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

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Director, Office of Vehicle Safety Compliance.

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